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PTO/SB/64 (10-07)

Approved for use through 10/31/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
1876 (203-1834)

First named inventor: Scott E. Manzo et al.

Application No.: 08/816,615

Art Unit: 3738

Filed: March 13, 1997

Examiner: D. Isabella

Title: GRAFT ATTACHMENT ASSEMBLY

RECEIVED

APR 17 2008

OFFICE OF PETITIONS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity - fee \$ 1,540.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Petition (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☒ has been paid previously on February 9, 1999.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Adjusted date: 11/07/2008 09:19:58
04/15/2008 CHA01 00000004 210558
01 FC1452 1549 00 CR
00016615

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Christopher G. Trainor
Signature

April 11, 2008
Date

Christopher G. Trainor
Typed or printed name

39,517
Registration Number, if applicable

Carter, DeLuca, Farrell & Schmidt
Address

631-501-5700
Telephone Number

445 Broad Hollow Road, Melville, NY 11747
Address

Enclosures: ☒ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Petition

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted on the date below with the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22312-1450, via electronic submission.

April 11, 2008
Date

Christopher G. Trainor
Signature

Christopher G. Trainor
Typed or printed name of person signing certificate

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OFFICE OF PETITIONS



PATENT
Atty. Docket: 1876 (203-1834)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Scott E. Manzo et al.

Examiner: D. Isabella

Serial No.: 08/816,615

Group: 3738

Filed: March 13, 1997

Dated: April 11, 2008

For: **GRAFT ATTACHMENT ASSEMBLY**

RECEIVED

APR 17 2008

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

OFFICE OF PETITIONS

PETITION TO REVIVE APPLICATION UNDER 37 C.F.R. §1.137(b)

Sir:

The above-identified application ("subject application") was indicated in the Notice of Abandonment, mailed February 23, 2000, to have gone abandoned because of "Applicant's failure to timely file new formal drawings as required in the Notice of Allowability."

Applicant's respectfully petition to revive the subject application under 37 C.F.R. §1.137(b).

FACTS SUPPORTING PETITION

On November 9, 1999, a Notice of Allowability and a Notice of Allowance and Issue Fee Due were mailed by the Examiner in the subject application setting the issue fee due date for February 9, 1999. The Examiner also required new Formal Drawings to be filed by the February 9, 1999 due date. On February 9, 1999, Neil D. Gershon, Esq., an attorney of record by

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 11, 2008.

Dated: April 11, 2008


Christopher G. Trainor

Power of Attorney filed on March 13, 1997, filed the issue fee of \$1,320.00 and three sheets of Formal Drawings (See Exhibit A) under separate Certificates of Mailing dated February 9, 1999. In each of these filings, the Serial No. was incorrectly identified as 08/816,165. The correct Serial No. for this application is 08/816,615. A return postcard, filed with the Formal Drawings, was stamped received by the U.S. Patent and Trademark Office on February 12, 1999 (copy enclosed as Exhibit B).

Because the filings were inadvertently directed to the wrong application serial number, a Notice of Abandonment was mailed in the subject application on February 23, 2000 indicating that the application was abandoned in view of "Applicant's failure to timely file new formal drawings as required in the Notice of Allowability."

In response to the Notice of Abandonment, on March 8, 2000, Mr. Gershon filed a letter (copy enclosed as Exhibit C) outlining the facts set forth above with attached copies of relevant documents. This letter was also inadvertently directed to Application Serial No. 08/816,165. No further response was ever received from the U.S. Patent and Trademark Office in the subject application.

In or about July of 2000, Mr. Gershon left the employment of United States Surgical Corporation ("USSC"), assignee of the subject application. Since the person most familiar with the application, Mr. Gershon, was no longer employed by USSC and all of the requirements for issuance of the application appeared to be satisfied, the application did not appear on the docket of any of the attorneys remaining at USSC and USSC failed to recognize that the U.S. Patent and Trademark Office did not respond to Mr. Gershon's letter of March 8, 2000. As such, Applicant's only realized that the application had not passed to issue in early August, 2002.

On August 28, 2002, Christopher G. Trainor, Esq. of Carter, DeLuca, Farrell & Schmidt, LLP ("CDFS"), outside counsel for USSC filed a Petition To Revive Application Under 37 C.F.R. §1.137(a) (see Exhibit D). This petition met the requirements of 37 C.F.R. §1.137(a) and included a copy of the formal drawings previously submitted on February 9, 1999, the petition fee set forth in 37 C.F.R. §1.17(l) and a statement that the entire delay in filing the petition from the due date for the formal drawings until the filing of the petition was unavoidable. However, the Petition To Revive Application Under 37 C.F.R. §1.137(a) was also inadvertently forwarded to Application Serial No. 08/816,165 instead of 08/816,615. Because Applicants believed that all requirements had been met for issuance, this application did not appear on the docket of any of the Tyco Healthcare (now d/b/a Covidien)¹ attorneys, assignees of this application.

A status check for the above-identified application was indicated on Mr. Brian Lefort's docket in October 2006. Mr. Lefort was in-house counsel for Tyco Healthcare in October of 2006. However, Mr. Lefort was traveling overseas much of his time towards the end of 2006 and the beginning of 2007 and left his position at Tyco Healthcare in February 2007. Thus, the status check was never performed.

The above-identified file was eventually transferred to Neil D. Gershon, Esq. who was now serving as outside counsel for Tyco Healthcare. When Mr. Gershon noticed the past filing errors, he requested that CDFS prepare and file a renewed petition to revive this application.

In light of the facts set forth above, Applicant's hereby petition for revival of the subject application under 37 C.F.R. §1.137(b). Accompanying this petition are:

¹ USSC was acquired by Tyco Healthcare.

i) a copy of the Formal Drawings previously submitted on February 9, 1999 including a copy of the cover letter filed therewith; and

ii) the Issue Fee Transmittal of February 9, 1999

iii) the petition fee as set forth in § 1.17(m).

The entire delay in filing this petition, including submission of the attached copy of Formal Drawings, from the due date for the Formal Drawings until the filing of this petition was unintentional.

The Commissioner is authorized to charge the petition fee under 37 C.F.R. §1.17(m) in the amount of \$1,540.00 to Deposit Account No. 21-0550. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 21-0550.

Respectfully submitted,

Christopher G. Trainor

Christopher G. Trainor

Reg. No. 39,517

Attorney for Applicants

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CGT:sf

EXHIBIT “A”